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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1963

No. 1141

DEPARTMENT OF MENTAL HYGIENE OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

EVELYN KIRCHNER, administratrix of the Estate of Vance,
Respondent.

OPPOSING BRIEF OF RESPONDENT

Evelyn Kirchner, Administratrix of the Estate of Eleanor Green Vance, the respondent herein, respectfully opposes a review of the judgment of the Supreme Court of California entered in the above case on January 30, 1964, and answers the petition of the Department of Mental Hygiene of the State of Cali-

fornia and the briefs of amici curiae filed herein by the Attorney General of the State of Illinois, the Attorney General of the State of New York, and the Attorney General of the State of Pennsylvania, as follows:

OPINIONS BELOW

The opinion of the Supreme Court of the State of California is reported in 60 A.C. 704, 388 P.2d 720, 36 Cal. Rptr. 488 (1964) and is appended to the petition.[1]

QUESTIONS PRESENTED

The questions presented in petitioner's petition on file herein are hypothetical, and they are not the questions presented to or considered by the Supreme Court of California.

The questions that were presented to the Supreme Court of California and considered by said Court are set forth in Appellant's Petition For A Hearing By The Supreme Court at page 2 thereof, and they are stated as follows:

> "(a) Does Welf. C. 6650 impose an unconditional and absolute liability upon an adult child, or her estate, for the care of an incompetent mother by the Department of Mental Hygiene where the mother has adequate funds of her own to pay the charges therefor?

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[1]Citations to this opinion will be cited as "Op-1" etc., in the Appendix to the Petition.

(b) If the answer thereto is in the affirmative would a judgment under such a statute constitute the taking of defendant's property without due process and a denial of the equal protection of the law?"

The California Supreme Court answered these questions as follows:

"Section 6650 by its terms imposes absolute liability upon, and does not even purport to vest in, the servient relatives any right of control over, or to recoup from the assets of the patient. A statute obviously violates the equal protection clause if it selects one particular class of persons for a species of taxation and no rational basis supports such classification. See *Blumenthal v. Board of Medical Examiners* [1962] 57 Cal. 2d 228, 237 [13]; *Bilyeu v. State Employees' Retirement System* [1962] 58 Cal.2d 618, 623 [2]). Such a concept for the state's taking of a free man's property manifestly denies him equal protection of the law." (Op-8)

STATUTE INVOLVED

Petitioner in its brief sets forth only part of California Welfare and Institutions Code section 6650. A reading of this part of the section alone may be misleading; so we are therefore setting forth at length herein the full text of the section.

"6650. The husband, wife, father, mother, or children of a mentally ill person or inebriate, the estates of such persons, and the guardian and administrator of the estate of such mental ill

person or inebriate, shall cause him to be properly and suitably cared for and maintained, and shall pay the costs and charges of his transportation to a state institution for the mentally ill or inebriates. The husband, wife, father, mother, or children of a mentally ill person or inebriate, and the administrators of their estates, and the estate of such mentally ill person or inebriate, shall be liable for his care, support, and maintenance in a state institution of which he is an inmate. The liability of such persons and estates shall be a joint and several liability and such liability shall exist whether the mentally ill person or inebriate has become an inmate of a state institution pursuant to the provisions of this code or pursuant to the provisions of Sections 1026, 1368, 1369, 1370, and 1372 of the Penal Code."

STATEMENT OF THE CASE

The Department of Mental Hygiene brought this action against the estate of Eleanor Green Vance, a deceased adult daughter of Auguste Schaeche, a committed patient at Agnew State Hospital. (CT 3:7-17.) The purpose of the action was to obtain reimbursement for the care provided Auguste Schaeche from August 25, 1956 to August 24, 1960, or for Seven Thousand Five Hundred Fifty-Four Dollars Twenty-Two Cents ($7,554.22). (CT 4:8.)

Evelyn Kirchner is the duly appointed administratrix of the Estate of Eleanor Green Vance. (CT 4:12-19.) She is also the guardian of the Estate of Auguste Schaeche, the committed incompetent.

Evelyn Kirchner, as Administratrix of the decedent's estate, on January 25, 1961, rejected the creditor's claim filed out of the Department of Mental Hygiene (CT 5:5), and then in her capacity as the Guardian of Auguste Schaeche she offered to pay the claim out of the assets of the incompetent's estate (CT 16:9-15), which said estate of the incompetent consisted of cash in the amount of Ten Thousand Nine Hundred Three Dollars ($10,903.00). (CT 16:6-7.) The Department of Mental Hygiene refused to accept payment from the Guardian (CT 16:9-15), and in due course the Department of Mental Hygiene as plaintiff brought this action on April 16, 1961.

Defendant demurred to the complaint on the ground that no cause of action was stated in that the complaint did not allege that the incompetent had "no estate out of which the claim of plaintiff * * * [could] be satisfied." (CT 7:8-11.) The demurrer was overruled (CT 11:19), and the defendant answered denying that her intestate, the daughter, "was legally responsible" for the mother's care and maintenance furnished by the state at Agnew "or any other place whatsoever" (CT 14:7-11); and further alleged that the incompetent mother herself owns (in her guardianship estate) Ten Thousand Nine Hundred Three Dollars ($10,903.00) in cash to which resort should first be had.

Both parties moved for judgment on the pleadings; plaintiff's motion was granted and defendant's was denied.

REASONS WHY A WRIT OF CERTIORARI SHOULD NOT BE GRANTED

1. The petition sets forth a hypothetical question that was never considered by the California Supreme Court. The petitioner is asking this Court to decide moot questions. In the case of *St. Pierre v. United States* (1943) 319 U.S. 41, 87 L.Ed. 1199, this Court says:

> "A Federal court is without power to decide moot questions or to give advisory opinions which cannot affect the rights of the litigants in a case before it."

At 5 Am.Jur.2d 203, it is stated as follows:

> "The function of appellate courts, like that of courts generally, is not to give opinions on merely abstract or theoretical matters, but only to decide actual controversies injuriously affecting the rights of some party to the litigation, and it has frequently been held that questions or cases which have become moot or academic are not a proper subject of review.
>
> The policy against passing upon moot cases or questions is so strong that even laches of parties cannot prevent the dismissal of an appeal or error proceeding when the question involved has become moot."

2. Petitioner's interpretation of California Welfare and Institutions Code section 6650 is at complete variance with the construction placed thereon by California courts, including the decision of the California Supreme Court before this Court. The said statute imposes on the husband, wife, father, mother or chil-

dren of a mentally ill person an unconditional liability for the support and maintenance of a mentally ill relative in a state institution, and this liability is joint and several. (*Dept. of Mental Hygiene v. McGilvery* [1958] 50 C.2d 742, 749-751; *Dept. of Mental Hygiene v. Rosse* [1960] 187 C.A.2d 283, 286; *Dept. of Mental Hygiene v. Shane* [1956] 142 C.A.2d Supp. 881, 883.) The liability imposed by this section being absolute is in no way correlated with the need of the patient or of the ability of the relative to pay. Nor is there any provision whereunder a contributing relative can recoup from a patient after the patient's release.

3. The California Supreme Court did not decide that the basic obligation imposed by California Welfare and Institutions Code section 6650 as being unconstitutional as contended by petitioner. The California Supreme Court in discussing the liability of a husband under the section for the care and maintenance of his committed wife says:

> "In Thrasher it was held (pp. 776-778 [3-8] of 105 Cal. App. 2d) that the husband of an incompetent committed to a state mental hospital was under the duty to support her therein even though she had estate of her own. That case is of small help to plaintiff here; manifestly, the basic obligation and relevant status of the husband arose from the marriage contract to which he was a consenting party and no consideration was given to the question as to whether imposing liability upon one spouse for support of the other in a state institution denies equal protection of the law to the servient spouse." (Op-4)

The California Supreme Court did not answer the question whether the husband would be liable under section 6650; it reserved the question for a future decision when it is properly presented.

Even the petitioner in its Petition For Rehearing Before The Supreme Court did not contend that the Court decided the constitutionality of the basic obligation imposed by section 6650. At page 40 of said petition, petitioner therein said:

> "2. Does the decision eliminate interspousal liability under section 6650?
>
> This problem, although adverted to in the court's opinion (See Opinion, p. 5) is left unresolved. Since liability of a spouse can be laid on a ground independent and exclusive of constitutional considerations, i.e., the marriage contract (cf. Opinion, p. 5; see also dissent of Justice Schauer, *Dept. of Mental Hygiene v. McGilvery*, 50 Cal.2d 742, 766), it would appear that such liability may justifiably be preserved."

4. Similar laws are not placed in jeopardy. At page 2 of the Amicus Curiae Brief of the Attorney General of the State of Illinois on file herein the applicable Illinois statute is set forth at length. It is clear that this Illinois statute does not impose an absolute liability upon the responsible relatives named therein. The responsibility of those relatives is conditional upon the need of the patient. The statute reads in part as follows:

> "* * *. If such patient is unable to pay or if the estate of such patient is insufficient, the respon-

> sible relatives, are severally liable for the payment of such sums, * * *."

In the case before the bench the California Welfare and Institutions Code section 6650 imposed an unconditional liability upon the adult daughter or her estate regardless of the needs of the mother or her ability to pay.

Likewise under the applicable statute of the State of New York which is set forth on page 2 of the Amicus Curiae Brief of the Attorney General of the State of New York only a conditional liability is placed on the relatives. Said section reads in part as follows:

> "* * *, if such relatives are of sufficient ability, shall also be jointly and severally liable and responsible for such payments, * * *."

The Attorney General of the State of New York expresses his concern on page 1 of his brief over the language of the Court in the Kirchner case wherein the Court concludes that it makes no difference whether the commitment is

> "* * * is incidental to an alleged violation of a [penal] statute, as in Hawley (59 Cal.2d 247), or is essentially a civil commitment as in the instant case, * * *."

We bring to the Court's attention that the California Legislature has found fit to impose liability in both types of commitments under the same statute. The applicable part of Welfare and Institutions Code section 6650 reads as follows:

> "The liability of such persons and estates shall be a joint and several liability and such liability shall exist whether the mentally ill person or inebriate has become an inmate of a state institution pursuant to the provisions of this code or pursuant to the provisions of Sections 1026, 1368, 1369, 1370, and 1372 of the Penal Code."

Where the Legislature distinguishes between the two types of commitments and imposes separate liability for civil commitment it has been held that there is a clear basis for distinction between those who are in hospitals merely for treatment and those who are imprisoned on account of some criminal charge. (*Kough v. Hoehler* [1952] 413 Ill. 409, 109 N.E.2d 177.) But that is not the legislative rule in California.

The Attorney General of the State of Pennsylvania in his brief on file herein has not favored us with a statement of the Pennsylvania statute. Nor has he raised any issue to be answered.

CONCLUSION

The rule of the decision of this can only be determined by reading the decision in the light of its facts and the issues raised. This, the petitioner and amici curiae failed to do. The petitioner has created a set of facts never considered by the California Supreme Court. On the facts upon which the Court based its decision an unconditional liability was imposed upon the servient relative even though the incompetent had an adequate estate of her own, and no right of

control over or to recoup from the assets of the incompetent were given to the relative. As stated by the Court:

> "Such a concept for the state's taking of a free man's property manifestly denies him equal protection of the law."

It is respectfully submitted that the petition should be denied.

Dated, Redwood City, California,
June 9, 1964.

JOHN WALTON DINKELSPIEL,
Attorney for Respondent.

ALAN A. DOUGHERTY,
Of Counsel.